IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6577 OF 2005

Dattatray Krishnaji Ghule ...Applicant.

V/s

State of Maharashtra
and anr. ...Respondents.

Shri V.R. Manohar, Senior Counse with Shri S.V. Kotwal for the applicant.

Smt. S.D. Shinde, APP for the State.

Shri P.D. Gharat, Special P.P. for C.B.I.

ALONGWITH
CRIMINAL APPLICATION NO. 7353 OF 2005

Hitendra Manohar Vichare ...Applicant

V/s

The State of Maharashtra
(Through C.B.I. Camp,
Mumbai) ....Respondents.

Shri S. Pasbola with Ms. Bhavana Gaja for the applicant.

Shri A.Y. Mirza, APP for the State.

Shri P.D. Gharat, Spl. P.P. for C.B.I.

CORAM: V.M. KANADE, J.

DATE: 3rd March, 2006

ORAL ORDER:

1. Both these applications can be disposed of by a common order as the applicants in both these applications are seeking bail and both are arrested in connection with C.R. No.131 of 2001 registered at Thane Nagar Police Station for the offence punishable under sections 192, 217, 218, 263(a) of the Indian Penal Code read with section 3(1)(ii), 3(2), 3(3), 3(4) and section 34 of MCOCA. Both the applicants were arrested on 8/10/2004. Both the applicants were Police Officers who were investigating the said offence which was registered vide C.R. No.131 of 2001 and pursuant to the investigating being entrusted to the CBI, their names were also added as accused and, thereafter, they were arrested and the charge-sheet has been filed against them by the CBI.

2. The prosecution case, in brief, is as under:-

3. On 16/5/2005, the applicant PSI Hitendra Vichare arrested the accused Sandeep Kandar and fake stamps worth Rs 51,000/- were seized. On the same day, the offence was registered vide C.R. No.131 of 2001 on a complaint which was filed by the applicant PSI Hitendra Vichare. PSI Vichare investigated the case from 16/5/2001 to 22/5/2001. Dattatray Ghule, PI,

took over the investigation of C.R. No. 131 of 2001 on 22/5/2001. On 23/5/2001, one Maruti Car was intercepted and huge quantity of fake stamps were seized from the accused Hemant Dubey and George Hiwale. On 11/6/2002, Senior PI Anil Deshmukh filed charge-sheet in the Court of Chief Judicial Magistrate, Pune. The applicant Dattatray Ghule was in-charge of the investigation from 22/5/2001 to 26/12/2001. The first charge-sheet was filed against Sandeep Kandar, Hemant Dubey, George Hiwale, Shabbir Shaikh, Abdul Karim Telgi and M.D. Madhav. The second charge-sheet was filed by the Police Sub-Inspector R.B. Malave on 24/3/2003 in the Court of Chief Judicial Magistrate, Pune against Shankar Ganappa and Shabbir Shaikh. On 2/7/2003, an additional charge-sheet was filed against seven accused and other absconding accused, after the case was reinvestigated by the Special Investigating Team (SIT). Thereafter, pursuant to the orders passed by the Hon'ble Supreme Court, investigation of the case was transferred to CBI and the provisions of MCOCA were invoked. Thereafter, CBI investigated the case afresh and both the applicants were arrested on 8/10/2004. On 15/3/2005, sanction was granted under section 23(2) of the MCOC Act, 1999. A fresh charge-sheet was filed on 16/5/2005. The applicants

applied for bail. Their applications were however rejected by the Special Judge and, thereafter, the present applications have been filed by both the accused.

4. The learned Senior Counsel Shri V.R. Manohar, appearing on behalf of the applicant Dattatray Ghule, submitted that the provisions of MCOCA, 1999 were not attracted to the facts of the present case and submitted that the requirement of the organized crime was totally absent and, therefore, the provisions of the MCOCA, 1999 could not have been invoked. He invited my attention to the provisions of section 2(1)(d)(e) and (f) and section 3(2) and 24 of the MCOCA, 1999. He submitted that the mandatory requirement of the organized crime under section 2(1)(d)(e) of the MCOCA, 1999 was that the act complained of or the crime committed was "by use of violence or threat of violence or intimidation or coercion or other unlawful means and that this was done with the objective of gaining pecuniary benefits or gaining economic or other advantage". It was thereafter submitted by the learned Senior Counsel that the use of violence or threat of violence or intimidation or coercion are all unlawful means and, therefore the words "other unlawful means" which are

found in section 2(1)(e) should be given the colour of the preceding words. He submitted that, therefore, the principle of ejusdem generis will be clearly applicable while construing the said provisions. He submitted that, therefore, on this principle, section 2(1)(e) enumerates the specific acts without exhausting the enumeration and the general words "other unlawful means" which follow the particular and specific words, therefore, will have to be construed to be of the same nature and belonging to the same genus as in the preceding words. He submitted that, therefore, so far as both these applicants are concerned, they were Police Officers who had initially investigated the said offence and, therefore, the very requirement of organized crime was totally absent. In support of the said submission, he invited my attention to the following judgments:-

(1) Ranjeet Singh Sharma Vs. State of Maharashtra reported in 2005 (2) Crimes 168. (para 29,30)

(2) M.N. Nambiar Vs. State of Kerala, reported in AIR 1963 S.C. 1116 (Para 9, 10)

(3) Maj. Kale Vs. State of Maharashtra reported in AIR 1977 S.C. 822 (para 8)

(4) Tilmanns Vs. S.S. Knnutsford reported in (1908) 2 K.B. 385.

(5) Attorney General Vs. Brown reported in (1920) 1 KB 773.

(6) Queen Empress Vs. Iman Ali reported in

ILR 10 ALL 150 (FB).

(7) Thakur Amarsinghji Vs. State of Rajasthan reported in AIR 1955 SC 504 (Para 38)

(8) Zafarkhan Vs. Board of Revenue reported in AIR 1985 SC 39 (para 14).

(9) M/s. Siddeshwari Cotton Mills Vs. Union of India reported in AIR 1989 S.C. 1019 (Para 6 to 8)

(10) Express Hotels Vs. State of Gujarat reported in AIR 1989 S.C. 1949 (Para 10)

(11) Asst. Collector of Central Excise Vs. Ramdeo Tobacco reported in AIR 1991 S.C. 506 (Para 6 to 9).

(12) Amarchandra Vs. Excise Collector reported in AIR 1972 S.C. 1863 (Para 9)

(13) State of Karnataka Vs. Kempairab reported in (1998) 6 SCC 103 (paras 8, 9).

(14) AL Ranjane V.s Ishwardas reported in (2003) 1 SCC 103 (Para 7 and 8)

The learned Senior Counsel Shri Manohar secondly submitted that the provisions of section 24 of the MCOCA, 1999 were also not attracted. He submitted that, in the present case, acts and omissions attributed to the applicant in the charge-sheet by the prosecution were referable to the category of omission or abstinence on his part from taking any lawful measures under the Act. He submitted that the abstinence or omission as contemplated under section 24 of the MCOCA, 1999 need not refer to the accused/public servant who had committed the act of omission or abstinence from taking any lawful measures

under any other statute and such abstinence, therefore, is not an offence under the MCOCA. He submitted that this also does not apply to every police officer or a public servant unassociated with a crime and its investigation. He submitted that apart from that, it was the duty of the investigating agency to demonstrate specifically the acts of omission or abstinence. He submitted that, in the present case, various allegations which were made, even if they are accepted on their face value, would not fall within the four corners of section 24 of the Act. The learned Senior Counsel Shri Manohar thus submitted that no case of abetment was made out by the prosecution. He invited my attention to the observations which were made by the Supreme Court in the case of Ranjitsingh Sharma Vs. State of Maharashtra reported in **2005(2) Crimes 168** in para 29 and in para 15 to 18 in the case of Bharat Shah Vs. State of Maharashtra reported in **2003 ALL MR (Cri) 1061**. He thereafter submitted that there was no material against the present applicants to show that they were part of the conspiracy to commit the said crime. He invited my attention to the observations made by the the Supreme Court in para 33 to 35 in the case of Ranjitsingh Sharma (supra). He lastly submitted that following observations made by the

Trial Court were without any material or basis:-

(i) No evidence that Shabbir was in custody on 16/5/2001 or 17/5/2001.

(ii) No evidence that Shabbir was present on 16/5/2001 when Sandip Kandar was arrested.

(iii) Name of Shabbir appears in discovery statement under section 27 drawn by applicant on 24.5.2001 and the other findings which are recorded in paras 12, 13 14, 15, 24, 25 and 26, 29, 30 and 32.

5. The learned Counsel appearing on behalf of the applicant Hitendra Vichare adopted the arguments made by the learned Senior Counsel Shri Manohar on the legal aspects. He further submitted that so far as factual aspects are concerned, there was no cogent evidence that Shabir Ahmed was arrested by Officers of Thane Crime Branch and, thereafter, was allowed to go or was allowed to escape. He submitted that the only witnesses who claimed to have seen Shabir Ahmed at Thane Crime Branch are Nilesh Agarwal and Manali Naik. He submitted that the Trial Court had held that it was highly impossible that witness Nilesh Agarwal could have seen Shabir Ahmed alongwith Sandeep Kandar at Thane Crime Branch. He submitted that so far as

Manali Naik is concerned, her statement which was recorded under section 164 was totally contradictory to her three previous statements and, therefore, the said statement was not reliable. It was further submitted that there was no material to show that Shabir Ahmed had escaped from the police custody. He further submitted that so far as the allegation of pecuniary gain by PSI Vichare is concerned, that was based on the statement of co-accused Siraj Nasipudi which was recorded under section 164 in which he has stated that some amount was paid to PI Jangale for being forwarded to the present applicant. It was submitted that this did not prove that the amount had been paid to the applicant Vichare. It is submitted that the allegation of pecuniary gain was based on conjectures and surmises. It was further submitted that in the statement of Siraj Nasipudi which was recorded under section 18 of the MCOCA, there was no such allegation made against the applicant Vichare. Further, he submitted that so far as the allegations which were made by witness Rupali Dubey are concerned, she had stated that she had paid a sum of Rs 46 lakhs to PI Ghule. There was, however, no material to show that the money was ever paid to the applicant Vichare. It was, therefore, submitted that even otherwise the payment was allegedly made by Rupali Dubey to PI

Dattatray Ghule for the purpose of giving proper treatment to her husband or his release on bail. It was submitted that, therefore, the pecuniary advantage, if any, was not related to any offence of organized crime or aiding and abetting the activities of AKL Telgi since Hemant Dubey was his rival. It was further submitted that the trial court had erred in holding that the applicant had failed to discharge is duty as a public servant by (a) not arresting Madhav MD and Shabir Ahmed, (b) not sealing the Office of M/s Sahara Enterprises and (c) not seizing the property from the said shop. The learned Counsel appearing on behalf of the applicant Vichare submitted that these findings were not based on material which was there on record which indicated that the Trial Court should not have given the said findings in view of the clear evidence on record which indicated that the applicant Vichare had taken all steps in discharge of his duty as a public servant. It was lastly submitted that in the absence of any evidence to suggest mensrea, acts of omission, commission, negligence or dereliction of duty, there was no indication that the applicant Vichare was in any way concerned with the said case. It was, therefore, submitted that the provisions of MCOCA were not attracted in the instant case. It was submitted that from the analysis of evidence on

record, the applicant Vichare cannot be convicted for an offence under the MCOCA and, therefore, he was entitled to be released on bail. He relied upon the judgments of the Supreme Court in the cases of Ranjitsingh Sharma (supra) & Bharat Shah (supra) and in the cases of Jayendra Saraswati Vs. State of Tamil Nadu reported in **2005 AIR SCW 323**, Chandran Vs. State of Tamil Nadu reported in **1978 SCC (Cri) 528** and Sharafat Hussain Vs. State of Gujarat reported in **1997 SCC (Cri) 48**.

6. The learned Special P.P. appearing on behalf of the respondents - CBI on the other hand submitted that the applicants had accepted illegal gratification in order to oblige the accused to facilitate their organized crime. He invited my attention to the statements of PW Mrs. Roopali Dubey which was recorded under section 164 and 161 of the Cr.P.C. in which she has stated that the applicants have demanded an amount of Rs 40 lakhs from her which was paid by her and further amounts were also paid to the applicants. He also relied upon the confessional statement of the accused Sirajuddin Kamal Nasipudi recorded under section 164 of the Cr.P.C. in which he has stated that he had paid Rs 2 lakhs to PSI Jangle for making payment to PI Dattatray Ghule through PSI

Vichare. He submitted that the contention of the applicant Hitendra Vichare that the payments were completed by end of May 2001 and that the withdrawals were up to June, 2001 and that there was inconsistency between the two is not correct. He invited my attention to the statement of Sirajuddin Nasipudi who has stated that Shabbir had escaped from the custody of Dattatray Ghule. He further submitted that Shabir Ahmed was always shown as wanted accused since he was never arrested by the applicants. He further pointed out the statement of witnesses in order to show that Shabbir was wrongfully confined for three days illegally and was not shown arrested for the purpose of extorting huge amounts and to prepare the case accordingly so as to help the organized crime syndicate of AKL Telgi and Shabbir was right hand of Telgi and he was operating through three different offices in Thana area. The learned Special P.P invited my attention to the statement of witnesses that the seized stamps were not sealed for facilitating the tampering. He further invited my attention to the case diary and submitted that the search was made of the Office of the accused Shabbir on 17/5/2001 itself by PSI Vichare but this fact was suppressed and that he had not sealed the premises so that the tampering of the material having evidentiary

value would have been done. He further invited my attention to the statements of eight witnesses to show that Hemant Dubey was picked up alongwith his wife from Hotel Galaxy and was taken to Thane Crime Branch and the Maruti 800 was produced by Dr. Tikke on the following day and a false panchanama was made thereafter. Further, he invited my attention to the statement of Nilesh Agarwal and confessional statement of the accused Sandip Kandar and Ghanshyam Gupta. He submitted that these statements show that the statement of Nilesh Agarwal had been suppressed and his name had been removed from the witness list. He submitted that the said tampering was done though they were aware of the seriousness of the offence. The learned Special P.P. submitted that therefore each and every submission made by the learned Counsel appearing on behalf of the applicants was not correct.

7. In reply to the legal submissions which were made by the learned Counsel appearing on behalf of the applicants, Shri Gharat, the learned Special P.P. appearing on behalf of respondents - CBI relied upon the judgment of the learned Single Judge of this Court in the case of Sidharth Ramesh Jammejay Vs. State of Maharashtra reported in **2005 ALL MR (Cri) 460**. He submitted that the learned Single Judge of this Court

has held that the expression "continuing unlawful activities" cannot be read ejusdem generis with the expression "by use of violence or threat of violence or intimidation or coercion". He further relied upon the judgment of the Supreme Court in the case of M/s. Siddeshwari Cotton Mills (P) Ltd Vs. Union of India and another reported in **AIR 1989 SC 1019.** He further relied upon the judgment of the Supreme Court in the case of Amar Chandra Chakraborty Vs. The Collector of Excise, Govt. of Tripura, Agartala and Ors, reported in **AIR 1972 SC 1863** regarding the scope and extent of the principle of ejusdem generis rule. He further relied upon the judgment of the Supreme Court in the case of State of Bihar and another Vs. P.P. Sharma and another reported in **1991 Cri. L.J. 1438.** He also relied upon the judgment of the Punjab & Haryana High Court in the case of Gurdial Singh Vs. Kartar Singh and Ors, reported in **1980 Cri.L.J. 955.** He submitted that, therefore, the applications for bail were liable to be rejected.

8. I have heard the learned Counsel appearing on behalf of the applicants and the learned Special P.P.

appearing on behalf of the respondents - CBI at length.

9. The applicants in both these applications are seeking bail and it is contended on behalf of the applicants that: (a) the provisions of MCOCA, 1999 are not attracted to the facts of the present case so far as the applicants are concerned and, therefore, they are liable to be released on bail, (b) the expression "other unlawful means will have to be given the same colour as the words preceding the said words on the principle of ejusdem generis and, on that analogy, the applicants who were police officers were not liable to be prosecuted under the provisions of the MCOCA, 1999 and (c) that the material which was brought on record by the prosecution qua the applicants did not disclose or in any way not sufficient for the purpose of convicting the present applicants for the offences which are alleged to have been committed by them.

10. Before I consider the submissions made by the learned Counsel appearing on behalf of the applicants, it will be profitable to briefly consider and note the allegations which are made against both the applicants in the charge-sheet which is filed by CBI. So far as

the applicants are concerned, following allegations are made against them:-

(i) It is alleged that for the purpose of sale and circulation of counterfeit Government Stamps at Thane, A.K.L. Telgi opened the Offices at various places in the year 2000 and started business under the direct and close supervision of Shabbir. The Offices were opened at the following places: (a) Sahara Enterprises, Shop No.3, Paranjape Udyog Bhavan, Station Road, Thane, (b) Sahara Enterprises, Shop No.104, Shivneri Building, near Gaondevi Maidan, Gokhale road, Thane (West) and (c) Sahara Enterprises at Hemendra Building, Chendani Koliwada, Thane (West).

(ii) A Current Account was opened with the Citibank, Fort, Mumbai Branch on 02/02/2001 and another Account was opened with Bharat Sahakari Bank Limited, Thane.

(iii) One Mahendra Tawde, a Licensed Stamp Vendor had employed one Sandeep Kandar who was residing in the locality of Hemant Dubey and the said Sandeep Kandar had supplied

counterfeit Share Transfer Stamps worth Rs 33 lakhs to M/s. Garbon Inter Capital, Mumbai.

(iv) On 16/5/2001, Sandeep Kandar was shown as arrested on the foothpath, opposite Khandelwal Sweets Shop, Station Road, Thane.

(v) It is alleged that Sandeep Kandar was arrested on information provided by Shabbir who was the close associate of the prime accused A.K.L. Telgi.

(vi) It is alleged that after Sandeep Kandar was arrested, the applicant Vichare had come to know about the illegal activities of the said Shabbir.

(vii) It is alleged that the present applicant Vichare did not arrest the said Shabbir and conspired with the applicant PI Shri Ghule and aided and abetted the organized crime syndicate headed by A.K.L. Telgi and the applicant Vichare allowed the said Shabbir to go scot-free and did not take the case properties on record. They did not carry out search of the three Offices of Sahara

Enterprises and did not draw necessary panchanama.

(viii) It is alleged that the applicant Ghule took over the investigation with the intention to extract more pecuniary benefits for himself from 22/05/2001 and it is alleged that both the applicants accepted the pecuniary gains for not arresting the key aide of A.K.L. Telgi.

(ix) It is further alleged that the applicants did not seal the premises of Sahara Enterprises with an ulterior motive to aid and abet the organized crime syndicate and they framed Hemant Dubey and George Hiwale who were operating rival gang, in order to aid and abet A.K.L. Telgi and thereby aided his organized crime syndicate.

(x) It is further alleged by the CBI that on the instructions of Shabbir, the applicants showed false recovery from Sandeep Kandar and registered a false complaint vide C.R. No.131 of 2001 on 17/5/2001. It is further alleged that the bogus statements were obtained from

Hemant Dubey in order to implicate him falsely.

(xi) It is alleged that Hemant Dubey was, in fact, picked up from Hotel Galaxy, Santacruz in the early hours of 23/5/2001 and nothing was recovered from him.

(xii) It is further alleged that Hemant Dubey & George Hiwale were falsely shown arrested while travelling in a Maruti Car driven by Hemant Dubey and carrying counterfeit stamps by the applicants hereinabove.

(xiii) It is alleged that George Hiwale was, in fact, arrested from his garage in Worli in the evening of 22/5/2001 by the staff of Thane Crime Branch.

(xiv) It is alleged that the applicants fabricated a panchanama dated 23/5/2001.

(xv) It is alleged that after recovery of counterfeit stamps from Shabbir, the applicants arrested two local stamp vendors at Vakola, Santacruz, showing recovery of

counterfeit stamps of Rs 13, 29, 958/- with the assistance of Anil Uttam Kadam who acted as panch witness.

(xvi) It is alleged that false disclosure panchanama dated 24/5/2001 was prepared and another false panchanama was made on 24/5/2001, showing false recovery of counterfeit stamps from the Office of Hemant Dubey in Santacruz of Rs 1,05,173/-.

(xvii) It is alleged by the CBI that Anil Kadam was used by the applicants for many illegal activities.

(xviii) It is alleged that both the applicants permitted the organized crime syndicate to carry on their illegal business for more than a year till the main accused was arrested in Bangalore in C.R. No. 545 of 2000 and subsequently in C.R. No. 135 of 2002 registered with the Bund Garden Police Station, Pune.

(xix) It is alleged that the applicants fabricated the evidence right from

registration of the case i.e. C.R. No. 131 of 2001 in order to see that the source of the stamps could never be established.

(xx) It is alleged that the applicants have committed the offence of destruction/fabrication of evidence by entering into criminal conspiracy with the members of A.K.L. Telgi gang by misusing their official position.

(xxi) It is further alleged that apart from allowing the organized crime syndicate to carry on their illegal business without any obstacle, they have also assisted the activities of organized crime by arresting the members of rival gang/innocent persons at the behest of A.K.L. Telgi for eliminating the competitors in the field.

11. I am unable to accept the submissions which are made by the learned Counsel appearing on behalf of the applicants. It would be relevant to take into consideration the Statement and Object and the Preamble of the Act. The Preamble of the Act reads as under:-

". An Act to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang, and for matters connected therewith or incidental thereto.

. Whereas it was expedient to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang, and for matters connected therewith or incidental thereto;"

The Statement and Object of the Act reads as under:-

2. **Statement and Object -** Organised crime has, for quite some years, now come up as a very serious threat to our society. It knows no national boundaries and is fuelled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering etc. The illegal wealth and black money generated by the organized crime is very huge and has serious adverse effet on our economy. It is seen that the organised criminal syndicates make a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There is reason to believe that organised criminal gangs are operating in the State and thus, there is immediate need to curb their activities.

. It is also noticed that the organized criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

2. The existing legal frame work i.e. the penal and procedural laws and the adjudicatory system are found to be rather inadequate to

> curb or control the menace of organised crime. Government has, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime."

12. The Preamble and the Statement of Object reveal that the intention of the legislature was to promulgate to effectively control menace of organised crime. The legislature in its wisdom thought it fit that since the existing legal frame-work was inadequate to curb or control the menace of organized crime, it was necessary to create new machinery and Act which had stringent provisions, since it felt that the organized crime had posed very serious threat to the entire Society. The Statement and Object reveal that it was noticed that the organized crime did not recognize national boundaries and is fuelled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering etc. This itself shows that the legislature recognised that it was not possible to define the nature of the illegal activities which are committed by the organized crime syndicate and the only avowed purpose of such syndicate was to gain pecuniary benefits either for one person or any other person or for the purpose of

promoting insurgency.

13. The definition of the organized crime which is found in section 2(1)(e) therefore has to be examined by keeping in mind what was the avowed object of the State in bringing this new Act. The organised crime has been defined as under:-

> 2(1)(e) "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.

14. In my view, therefore, the words "other unlawful means" cannot be said to be a general term and that it has to be given the same meaning as the words which are preceding this term. The words "other unlawful means", therefore, would include all those other categories of illegal means which cannot be otherwise

defined. In the Statement and Object, it has been stated that illegal wealth is generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering etc. The words "other unlawful means", therefore, in my view, cannot be given a restrictive meaning of the preceding words, otherwise the very purpose for which the Act was brought into force would become redundant. The submission of Shri Manohar, the learned Senior Counsel appearing on behalf of the applicant, therefore, cannot be accepted. There cannot be any dispute regarding the ratio of the judgments on which the reliance is placed by the learned Senior Counsel. However, the said ratio will not apply to the facts of the present case. I am fortified in my view by the judgment of the learned Single Judge of this Court in the case of Sidharth Ramesh Jammejay Vs. State of Maharashtra reported in **2005 ALL MR (Cri) 460**.

15. The other submissions of the learned Counsel appearing on behalf of the applicants in brief are **(a)** that the provisions of MCOCA, 1999 are not attracted in the present case; **(b)** that the material on record is insufficient and it can also be shown that there is no possibility of the applicants getting convicted for

the alleged offence; and **(c)** that the Special Judge, while deciding the respective applications of the applicants, has given the findings which are not based on material which is relied upon by the prosecution.

16. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the applicants. Both the applicants have also been charged under sections 3(1)(ii), 3(2), 3(3), 3(4) and 24 of the MCOCA, 1999 and also under the other provisions of the Indian Penal Code. The word "abet" has been defined under section 2(1)(a) of the Act. Similarly, the words "continuing unlawful activity", "organised crime", "organised crime syndicate" have been defined in sections 2(1)(d), 2(1)(e) and 2(1)(f). A conjoint reading of these definitions discloses that there is a thread which runs through the definition of the word "abet" and the other terms mentioned hereinabove and, therefore, while construing the provisions of section 3(1)(ii) and (3) where these expressions have been used, they cannot be read in isolation and, therefore, any person who abets, conspires in commission of the offence by organised crime syndicate, is also liable under the provisions of section 3(2) of the said Act. The submissions of the learned Counsel appearing on behalf of the

applicants that the provisions of the said Act are not attracted cannot be accepted as it is alleged by the prosecution that the applicants, by misusing their official position and knowing fully well the illegal activities of the prime accused A.K.L. Telgi, allowed him to flourish in his illegal activities and, as a result, he could spread his tentacles throughout the country till his arrest in Karnataka and, thereafter, in Pune.

17. In the present case, it is alleged by the prosecution that the applicants conspired with and abetted the prime accused A.K.L. Telgi by not prosecuting him and by allowing his right-hand man Shabbir Shaikh to get away scot-free and thereby allowed A.K.L. Telgi to spread his illegal activities of selling counterfeit stamps etc all over Maharashtra and also in other States and accepted pecuniary advantage in the process and further fabricated the evidence to ensure that he is not prosecuted and, over and above that, it is alleged that in order to eliminate the competitors, the rival gang leaders were falsely implicated in other false cases. In view of these allegations, it cannot be said that the provisions of MCOCA, 1999 are not attracted to the facts of the present case. The submission of the

learned Counsel for the applicants at **(a)** above, therefore, cannot be accepted.

18. So far as the submissions which are at **(b)** and **(c)** are concerned, Shri Manohar, the learned Senior Counsel invited my attention to the panchanamas which were allegedly prepared by the applicant Vichare. He submitted that it was not possible to hold that the said panchanama was fabricated. He invited my attention to the statements of the panch witnesses. He also submitted that one of the panch witneses had later on made a complaint that he was physically tortured and he was made to retract his earlier statement. He submitted that this clearly indicated that CBI had procured the confession of witnesses by using third degree methods only to implicate the applicants. He further submitted that there was discrepancy in the statements of witness Roopali Dubey who had claimed that she had distributed various amounts to the applicants and other officers because the payments were allegedly made by her in the month of May 2001 whereas the withdrawals from the Bank were made in June, 2001. He submitted that this discrepancy clearly indicated that the allegations made against the applicants were palpably false. He further invited my attention to the period during

which investigation was carried out by the applicant Vichare and he submitted that during this period all efforts had been taken by him to nab the culprits and, therefore, the allegation that the applicants had allowed Shabbir Shaikh to go away scot-free was false and malafide. He also invited my attention to the findings which were recorded by the Special Judge in the impugned order and urged that these findings were not borne out by the material which is on record. He further invited my attention to the provisions of section 24 and submitted that the said provision would not be attracted and, at the most, it can be said that the applicant was liable for departmental inquiry and, in any case, the provisions of MCOCA were not attracted to the present case.

19. I have perused the relevant statements of witnesses on which reliance is placed by the prosecution in support of the allegations which are made against the present applicants. In my view, submissions made by the learned Counsel for the applicants cannot be accepted as there is sufficient material on record to show that the applicants were involved in commission of the said offence and it cannot be said, at this stage, after the material is examined, that the applicants are not guilty of the

said offence. From the statement of Mrs. Roopali Hemant Dubey which has been recorded under sections 164 and 161 of the Cr.P.C., it is clear that she has made payments to the applicants and other police officers. She made payments to the following police persons:-

(a) Rs 20 lakhs to Commissioner Mr. Shangari.

(b) Rs 12 lakhs to the applicant Dattatray Ghule.

(c) Rs 10 lakhs to applicant H.M. Vichare.

(d) Rs 2 lakhs to the absconding accused and the so-called Panch, Anil Uttam Kadam.

(e) Rs 2 lakhs to the Assistants, Constables, etc.

P.W. Mrs Roopali Hemant Dubey has made following payments on the following dates.

(a) Rs 5 lakhs on 23/5/2001 at 4 O'clock.

(b) Rs 5 lakhs on 24/5/2001 at 11 O'clock.

(c) Rs 10 lakhs till 7/6/2001

(d) Rs 5 lakhs on 23/6/2001

(e) Rs 2 lakhs on 24/6/2001 at 8.00 P.M. in a jeep on the Thane Highway.

(f) Rs 50,000/- on 25/6/2001 at 7 AM at Thane Crime Branch.

(g) Rs 50,000/- on 26/6/2001 at 8 PM at Thane Crime Branch

(h) Rs 2 lakhs on 7/7/2001 at 10 PM at Vile Parle Airport.

(i) Rs 10 lakhs on 9/7/2001 at Police Station.

From the relevant bank entries, it can be seen that there is no inconsistency in the dates of withdrawal and the dates of payments. Further, the accused Sirajuddin Nasipudi has stated in his confessional statement under section 164 Cr.P.C. that he had paid Rs 2 lakhs to PSI Jangle for making payment to PI Dattatray Ghule through PSI Vichare. Sirajuddin Nasipudi has further stated that by the time Shabbir had escaped from the custody of Dattatray Ghule, an amount of Rs 29 lakhs was paid to PSI Jangle.

20. The other allegation against the applicants is that the applicants allowed the accused Shabbir to escape from their custody. PW Nilesh Agarwal,

Sirajuddin Nasipudi and PW Ghanshyam Manoharlal Gupta have stated about the confinement of Shabbir in police custody for three days. Further, from the said statements, it can be seen that the stamps which were seized were not sealed and it was obviously done for the purpose of facilitating the tampering of this evidence. Thirdly, from the entries in the Case Diary it can be inferred that the Office of the accused Shabbir was not sealed and thereby opportunity was given to him to destroy the evidence.

21. Another allegation is fabrication of the panchanama and falsely creating the evidence to show that Hemant Dubey was arrested from the Maruti Car. From the statements of Subhash Sharma, Head Constable Jagdale, Roopali Dubey, Dr. B.P. Tikke, Syyed Iqbal, the Receptionist of Hotel Galaxy, 5 employees of George Hiwale, it is evident that Hemant Dubey was arrested from Hotel Galaxy at Santacruz and not from Maruti Car as alleged. This discloses that the panchanamas dated 23/5/2001 and 24/5/2001 were obviously fabricated. All this material which is on record, in my view, clearly indicates that the applicants cannot be said to be not guilty of the offence with which they are charged and thus there is sufficient material on record against the present

applicants and, therefore, in view of the express bar as provided in section 21(4), it is not possible to grant bail to the applicants.

22. Applications for bail are, therefore, rejected.

(V.M. KANADE, J.)